



TOWN OF TIBURON  
Tiburon Town Hall  
1505 Tiburon Boulevard  
Tiburon, CA 94920

Action and Approved Minutes - Regular Meeting  
Tiburon Planning Commission  
January 13, 2010 – 7:30 PM

## ACTION MINUTES

### TIBURON PLANNING COMMISSION

#### CALL TO ORDER AND ROLL CALL **7:30 PM**

Chairman Kunzweiler, Commissioner Corcoran, Commissioner Frymier **All Commissioners Present**

#### ORAL COMMUNICATIONS

Persons wishing to address the Planning Commission on any subject not on the agenda may do so under this portion of the agenda. Please note that the Planning Commission is not able to undertake extended discussion, or take action on, items that do not appear on this agenda. Matters requiring action will be referred to Town Staff for consideration and/or placed on a future Planning Commission agenda. Please limit your comments to no more than three (3) minutes. Testimony regarding matters not on the agenda will not be considered part of the administrative record.

#### COMMISSION AND STAFF BRIEFING **There was none**

Commission and Committee Reports  
Director's Report

#### PUBLIC HEARING

1. 1704 TIBURON BOULEVARD: CONDITIONAL USE PERMIT FOR THE OPERATION OF A WINE TASTING AND SALES BUSINESS; FILE #10905; K2 Properties LLC, Owner; RSB Vineyards LLC, Applicant; Assessor's Parcel No. 059-102-17 [LT] **Conditional Use Permit Approved 3-0**
2. 1505 TIBURON BOULEVARD: CONDITIONAL USE PERMIT FOR THE INSTALLATION AND OPERATION OF A WIRELESS COMMUNICATIONS FACILITY; FILE #10902; Town of Tiburon, Owner; WesTower Communications for Clearwire (Clear Wireless LLC), Applicant; Assessor's Parcel No. 058-171-92 [SA] **Conditional Use Permit Approved 3-0**
3. 1 BLACKFIELD DRIVE: CONDITIONAL USE PERMIT FOR THE INSTALLATION AND OPERATION OF A WIRELESS COMMUNICATIONS FACILITY; FILE #10903; Cove Shopping Center, Inc., Owner; WesTower Communications for the Clearwire (Clear Wireless LLC), Applicant; Assessor's Parcel No. 034-212-18 [SA] **Conditional Use Permit Approved 3-0**

MINUTES

3. PLANNING COMMISSION MINUTES – Regular Meeting of November 11, 2009  
Adopted 3-0

ADJOURNMENT    At 8:45 PM

PLANNING COMMISSION  
APPROVED MINUTES NO. 992  
January 13, 2010  
Regular Meeting  
Town of Tiburon Council Chambers  
1505 Tiburon Boulevard, Tiburon, California

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**CALL TO ORDER AND ROLL CALL:**

Chair Kunzweiler called the meeting to order at 7:30 p.m.

**Present:**        Chair Kunzweiler, Commissioners Corcoran and Frymier

**Absent:**         None

**Staff Present:** Director of Community Development Anderson, Associate Planner Tyler, and  
Minutes Clerk Levison

**ORAL COMMUNICATIONS:** None

**COMMISSION AND STAFF BRIEFING:**

Director of Community Development Anderson reported that the Town Council has agendized interviews for the two Planning Commission vacancies at its next meeting. He stated that the Parente Vista application has been re-filed and should come before the Commission in the next 60 days, as will a conceptual master plan review application for a 14.5-acre site off lower Trestle Glen Boulevard. Staff also anticipates that a hearing on the Alta Robles EIR will be scheduled for February.

**PUBLIC HEARING:**

- 1. 1704 TIBURON BOULEVARD: CONDITIONAL USE PERMIT FOR THE OPERATION OF A WINE TASTING AND SALES BUSINESS; FILE #10905; K2 Properties LLC, Owner; RSB Vineyards LLC, Applicant; Assessor's Parcel No. 059-102-17**

Associate Planner Tyler presented the staff report, stating that the applicant proposes to establish and operate a wine tasting and sales business, located at 1704 Tiburon Boulevard, in downtown Tiburon. The prior use at this location was a clothing boutique called "Pure Elegance."

The business would specialize in wines specifically from Uptick Vineyards, providing patrons with wine tastings and an opportunity to purchase wine by the glass for consumption on the premises. Patrons would also be able to purchase wine by the bottle for consumption off the premises. No sale of food or preparation would occur on the site.

The proposed hours of operation would be seven days a week, 11AM to 7PM. The applicants have indicated they would have approximately one to three full time staff members and may add a part time staff member, depending on business volume.

A conditional use permit is required because the proposed use is significantly different in nature than the prior use, and includes retail sale of alcohol, as well as the serving of alcoholic beverages for consumption on the premises.

Ms. Tyler stated that staff reviewed the project for consistency with the Tiburon General Plan, noting that Policy DT-1 of the Downtown Element of the General Plan states that, "the Town shall promote a well-maintained downtown area that serves the commercial, service, and passive recreation needs of the community." The proposed use would not be the first business to include wine tasting in the downtown area; these wine-tasting businesses appear to be successful in the downtown area, and staff is unaware of any problems stemming from such uses.

Due to the high number of existing alcohol-related uses in the geographically small downtown area, the State Alcohol and Beverage Commission (ABC) requires that a community make a special finding in order that an alcohol sales permit may be issued for another new alcohol-related use. This finding is to the effect that the proposed use "serves the public convenience and necessity," and is required when a geographic area meets a specific "over-concentration" criterion of the ABC. Staff has included such a finding in the draft resolution for the Commission's consideration, should it move forward with approval of the application.

Ms. Tyler noted that staff received a letter of complaint from another downtown property owner regarding garbage and recycling receptacles for the business. While the site plan indicates a trash enclosure behind the building and accessed from Juanita lane, it is unclear whether this particular trash enclosure is for the tenants within the subject building, or for an adjacent property. Staff has included a condition of approval that requires the applicant to provide on-site garbage and recycling receptacles, or provide evidence of an acceptable arrangement for disposal with an adjacent property owner, prior to issuance of an occupancy certificate and commencement of use. Staff also evaluated parking and sees no issue, as the volume of patrons would not constitute a significant change.

Commissioner Frymier inquired as to the origins of the finding that the proposed use "serves the public need and necessity." Mr. Anderson said the language is taken directly from the ABC.

Commissioner Corcoran asked and confirmed that the applicant would require an amendment to the use permit in order to expand the use to include food service.

Chair Kunzweiler asked what criteria are used to determine “over-concentration” within a geographic area. Mr. Anderson explained that ABC simply looks at the number of establishments which serve alcohol within a given radius and that, as Tiburon’s downtown area is geographically small, it would slip easily into the category of over-concentration.

Steve Black, applicant, said that Uptick Vineyards is a small family business comprised of himself, his wife, and his two children. He said he felt the hours of operation to be the best time within which to target the greatest volume of foot traffic from local residents as well as tourists. Wine is a \$51 billion per year industry for the state of California and would be a beneficial addition to the Town. To the point regarding “over-concentration,” he said that would ultimately be determined at the discretion of ABC and suggested that increased concentrations and the resulting competition would in fact increase tourism in the Town. He assured the Council that his family has no intention of expanding into any sort of food service, stating that it is not the winery’s business model and would create a considerable amount of unwanted work for him. He stressed that Uptick Vineyards is a small family business set on 30 acres and said he sincerely desires an opportunity to expand his business into the Town of Tiburon.

Commissioner Frymier inquired about other Uptick Vineyards’ tasting rooms. Mr. Black said there are none. He explained that the vineyard is located at his home which is zoned for only agricultural uses, so a tasting room would not be permitted there.

Commissioner Corcoran questioned the sufficiency of the subject site’s storage and asked what sort of delivery schedule is anticipated. Mr. Black said it would be difficult to accurately project without knowing how much traffic is expected. He said there is a fair amount of storage behind the bar area and said he did not anticipate deliveries occurring more than once weekly.

Chair Kunzweiler opened the public hearing.

#### Public Comments:

Ron Skellenger, Windsor Vineyards, relayed a conversation with the Marin County Health Inspector who mentioned she had not seen the plans for this project. He questioned whether the chain of communication is functioning properly and cautioned the applicant on the many logistical issues associated with passing an inspection by the Health Department.

Mr. Black said he felt it would be appropriate to obtain a conditional use permit from the Town before beginning work on site plans that would comply with Health Code requirements.

Commissioner Corcoran asked Mr. Skellenger’s thoughts on the impacts of an additional wine related business within the Town.

Mr. Skellenger said this last year has been the worst he has seen in the last 25 years at Windsor Vineyards. The applicant must certainly be an optimist but conceded that it is certainly Mr. Black’s call as to when to expand his own business. He harbors selfish concerns about the potential impacts of increased competition and hoped the applicant’s belief that it would stimulate business is more the case.

Brooke Tognazzini, Prima Palate, said she opened her business (an art gallery converted to wine tasting room) a little over a year ago. She reiterated Mr. Skellenger’s warnings regarding the

Health Department, stating that it presented her with considerable trouble despite the assistance of Postino Restaurant Supply, who is very experienced in these types of use conversions. She said many clients and tourists have commented on how wonderful it is to have the two existing tasting rooms in Tiburon and how the town is truly becoming somewhat of a wine destination. She admitted that she has concerns about the impacts of competition but also said she believes competition is healthy.

Jeffrey Willmore, Keegan & Coppin Co., said he represents the landlord's commercial real estate interests. The property owner asked him to convey the information that he has a long-standing relationship with the owner of 16 and 18 Main Street and that the trash enclosure built between those parcels and attached to the subject site is for the use of his tenant's trash and recycling needs.

Chair Kunzweiler asked if this information would fulfill the condition of approval regarding refuse and recycling. Ms. Tyler said staff would be more comfortable with written evidence of that understanding and has conveyed as much to the landlord.

Mr. Willmore explained that there has been some difficulty in reaching the owner of 16 and 18 Main but said something would soon be forwarded to staff.

Chair Kunzweiler closed the public hearing.

Commissioner Frymier welcomed Mr. Black and Uptick Vineyards to the town. She said the staff report is very specific, that she is comfortable the conditions of approval can be met, and that she finds the use compatible with the Town's General Plan provisions.

Commissioner Corcoran concurred, stating that the downtown site seems appropriate and the use should increase foot traffic. He said he spoke with several residents and local real estate agents who also supported the use and location. He said he preferred to consider this a benefit to other businesses in town and suggested that Mr. Black, Mr. Skellenger, and Ms. Tognazzini work together on promotional ideas for increasing the Town's presence as a wine destination.

Chair Kunzweiler supports the project and believes the Commission to be in agreement on the finding that this use would serve public convenience and necessity. He wished the applicant luck in this venture and hoped that all businesses in Town would soon benefit from an upswing in the economy.

<p><b>ACTION:</b> It was M/S (Corcoran/Frymier) to adopt the resolution granting a conditional use permit for the operation of a wine tasting and sales business at 1704 Tiburon Boulevard. Motion carried: 3-0.</p>
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Mr. Black said he has many business contacts and former associates through whom he will network to increase tourism within the town as a whole.

**3. 1 BLACKFIELD DRIVE: CONDITIONAL USE PERMIT FOR THE INSTALLATION AND OPERATION OF A WIRELESS COMMUNICATIONS FACILITY; FILE #10903; Cove Shopping Center, Inc., Owner; WesTower Communications for the Clearwire (Clear Wireless LLC), Applicant; Assessor's Parcel No. 034-212-18 [SA]**

Mr. Anderson presented the staff report, stating that Clearwire has submitted an application for a conditional use permit to operate a wireless communications facility (WCF) on property located at 1 Blackfield Drive. The WCF would consist of installing antennas, microwave dishes, and remote radio units inside the existing false chimney on the Blockbuster Video building, and installing equipment cabinets and a small Global Positioning System (GPS) antenna adjacent to the west-facing end of the building. The facility would be used for broadband wireless network services, also called WIMAX. This type of technology turns the entire coverage area into a broadband wireless internet-served area, whether it is accessed from a home, office, or vehicle. The facility would be co-located with an existing Sprint WCF facility, and would utilize the same false chimney and screened equipment area used by Sprint.

Clearwire is a new wireless communications entrant to the Tiburon Peninsula and this facility is part of a series of five installations proposed to provide service coverage for portions of the surrounding peninsula vicinity. The coverage areas for individual facilities and the combined facilities are somewhat smaller than those seen by the Commission on prior WCF applications. This is because Clearwire operates at a higher frequency with a slightly weaker signal that is somewhat more subject to obstruction by structures and trees, thus reducing the signal penetration rate. Clearwire estimates the coverage area is about 20% smaller than a typical wireless phone carrier using older technology.

Mr. Anderson reviewed the project components, stating that staff believes the proposal to be in good conformance with the Town's WCF Standards. The applicant submitted a radio frequency (RF) report evaluating the proposed facility's compliance with applicable FCC standards, including measurements of the Sprint facility on the site and predictive modeling for the operation of the existing and proposed facilities. The report indicated that the combined operation of the Sprint and Clearwire antennas would not exceed 2.4% of the FCC public limit at ground level and 3.8% at a second-floor level of the nearest building.

Commissioner Corcoran referred to the RF report submitted by the applicant and asked if additional reports would be required for ongoing monitoring of the site. Mr. Anderson explained that the initial report submitted is theoretical in nature, that the applicant would be required to commission an actual report within 30-60 days of site activation, and that an updated RF report would be required for any subsequent CUP renewals.

Ryan Elias-Berg, Clearwire, said his company is looking to establish broadband wireless network in the greater San Francisco Bay Area. He explained that Clearwire's partnership with Sprint allows them to utilize existing facilities and compounds, thereby reducing the need for additional new WCF locations.

Commissioner Frymier inquired about the timeline for installation and service activation. Mr. Elias-Berg said that a building permit needs to be obtained before the 3 to 5 day installation process occurs.

Commissioner Frymier asked how often RF emissions are monitored. Mr. Elias-Berg said there is no anticipated increase in RF emissions post-installation and new reports would only be commissioned for CUP renewals or when new equipment is installed. Chair Kunzweiler confirmed, stating that the permits are reviewed every 5 or 10 years and RF emissions are measured.

Commissioner Frymier thought 5-year intervals were rather long when considering the potentially dramatic effects of RF emissions but said she could support that if it were standard. Mr. Anderson explained that the initial RF study takes into account maximum power output of WCF's at the site, but said that the addition of any other antennas or equipment would require a new RF study.

Commissioner Frymier asked when technological advancements in the form of smaller components could be anticipated. Mr. Elias-Berg said this is the smallest equipment available at this time and that there would be no way to foresee when anything smaller would be available.

Commissioner Frymier said the Town would ultimately prefer that the components were invisible and asked who initiates the installation of smaller equipment. Mr. Elias-Berg said it would also be in the best interests of Clearwire to use the most advanced technology.

Commissioner Corcoran requested more information on the estimation that Clearwire's coverage area would be 20% smaller than a typical wireless phone carrier. He said that would offer fairly spotty coverage and assumed there are plans to broaden that coverage in the future. Mr. Elias-Berg said Clearwire has little interest in providing phone coverage and will focus more on a home-based broadband use. He said there are no plans for additional Tiburon Peninsula sites beyond those already identified.

Chair Kunzweiler asked if the entire peninsula network is contingent upon approval of this location. Mr. Glesiberg confirmed that the signals from each site do communicate with one another and said that if this site were not viable, another site would need to be identified.

Chair Kunzweiler referred to the coverage map and asked what percentage of Tiburon residents will be able to use the service. Mr. Elias-Berg could not specify a percentage. Bill Stephens, Clearwire, confirmed that the commercial downtown area and as broad a residential base as possible are the focus. He explained that throughout the Bay Area and particularly in Marin County, there are limits to the scope of systems that can even be proposed.

Chair Kunzweiler said he was under the impression that a service provider's FCC license requires a licensee to make assurances to provide certain degrees of coverage. Mr. Stephens said that is a mandate set forth by the California Public Utilities Commission (CPUC). He explained that Clearwire is not a telephone company and that while it does hold a federal license, it is not subject to the service mandates set forth by CPUC. He added that the licenses in question were allocated to and approved for Sprint, who then transferred their title to Clearwire.

Chair Kunzweiler said he happens to live on the back side of the Tiburon Peninsula and that there is a large percentage of residents who will not be covered by this service. Mr. Stephens said the signals will also be broadcast from Corte Madera and San Quentin. He estimated that portions of that part of the Peninsula may actually be covered by those signals. He said Clearwire's signals are targeted at the areas mentioned earlier, rather than arterial coverage for motorists.

Commissioner Corcoran noted that automakers are developing wireless systems for use in vehicles. Mr. Stephens confirmed, said that anyone in need of broadband coverage could certainly avail themselves of this service, and noted that moving vehicles do not necessarily

require uninterrupted connectivity. He likened the signal use in vehicles to the buffering period experienced while downloading and playing a video from a personal computer.

Commissioner Frymier asked why Sprint is not pursuing this service. Mr. Stephens said this is a scalable business model with technology that is owned by Clearwire. He said this technology is only now in a state where it can be offered to the general public in a broad way and noted that it will not only serve Sprint and other wireless entities, but that Sprint and Comcast are both major investors.

Commissioner Corcoran questioned and confirmed that Clearwire will launch its services at the end of this year.

Chair Kunzweiler opened the public hearing.

#### Public Comments:

Peter Pursley, San Anselmo, said his family owns a rental property situated within several hundred feet of the proposed project. He referred to Exhibit 7 of the staff report, stating that the Hammett & Edison report is based on assumptions for both the Clearwire and Sprint service components and therefore fails to comply with FCC directives. While the Planning Commission is barred from considering adverse health impacts as a basis for denial of this application, it does not excuse the applicant nor preclude the Commission from raising the topic. He distributed his written comments as well as a report from the San Francisco Medical Society which raises alarming concerns about the emissions which accompany antennas. He proposed that the applicant be required to take affirmative steps ensuring the safety of surrounding parties, including notice to everyone within 2500 feet of the subject site to beware of potential exposure symptoms. He also recommended that the applicant offer in depth discussion on the true benefits this service will provide to the community and what steps will be taken to facilitate service access for the disabled, unemployed, and elderly members of the community.

The public hearing was closed.

Mr. Elias-Berg noted that condition of approval No. 5 requires the applicant to commission and produce a study of the site's EMF generation within 60 days of installation. He is confident the site will comply with all standards and regulations but in the event it did not, service would not be allowed to continue.

Commissioner Corcoran acknowledged Mr. Pursley's comments, said he had similar concerns himself, and said it is important to look at these facilities in a comprehensive way. He said it is to these types of concerns that the Town developed its wireless standards and that he inquired about Clearwire's long-range plans. He said he is confident that the initial as well as ongoing emissions tests will help protect residents and recommended that, for the sake of further reassurance, the applicant share the results of any tests it conducts with the Town. He also shared concerns over the digital divide but said that greater competition typically translates into greater opportunities for the consumer. He welcomes the presence of another internet provider and is glad to see Tiburon in on the early stages of this service.

Commissioner Frymier said she believes the design components of this proposal to be secondary to any resulting health impacts. She said staff has presented an articulate and straightforward

report which carefully studied the project for conformance with the Town's updated and stringent wireless standards. She believed Clearwire's presence in Town would be positive; she appreciated Mr. Stephens' explanation of this service versus what others are offering, and welcomed the applicant to Tiburon.

Chair Kunzweiler said his thoughts were similar to those raised by his fellow Commissioners. He said that safety has been the root of much concern and debate since the wireless world was conceived and thought the Commission should leave that debate to the authorized experts. He agreed that health issues are a primary concern and said he is comforted that the report indicates only single digit percentages of the maximum values set forth by the FCC. The Town's interests are not so different from those of responsible wireless providers. He shared concerns about the digital divide and quasi-public facilities that do not fully serve the public, but said that is a public policy issue that the Planning Commission has not been tasked with solving.

**ACTION:** It was M/S (Frymier/Corcoran) to adopt the resolution granting a conditional use permit for the installation and operation of a wireless communications facility located at 1 Blackfield Drive. Motion carried: 3-0.

**2. 1505 TIBURON BOULEVARD: CONDITIONAL USE PERMIT FOR THE INSTALLATION AND OPERATION OF A WIRELESS COMMUNICATIONS FACILITY; FILE #10902; Town of Tiburon, Owner; WesTower Communications for Clearwire (Clear Wireless LLC), Applicant; Assessor's Parcel No. 058-171-92**

Mr. Elias-Berg thanked staff for a comprehensive report and explained that he worked closely with the Town Engineer to obtain access to the site and design a project that could not be seen from street level.

Chair Kunzweiler opened the public hearing.

Public Comments:

Peter Pursley, San Anselmo, asked if this particular facility would also be co-located and if the submitted RF report includes an actual or hypothetical description of the equipment to be installed.

Mr. Stephens stated that Hammett & Edison prepares nearly 100% of the RF reports for Bay Area jurisdictions. He said that while they have a very strong database of equipment, it is not always possible to determine specifically which equipment will be installed at the time initial tests are conducted. He acknowledged that certain assumptions based on maximum allowable emissions are made in the preliminary report but stressed that all actual components and emissions would be identified in the post-installation study.

The public hearing was closed.

Commissioner Frymier said the applicant has done an excellent job of concealing equipment but she would, of course, love to see it even smaller. She noted that the potential library expansion is still under development, as are possible play area locations for the site. Out of concern for children playing in the area, she recommended possibly adding a provision to the Town's

wireless guidelines that would include public libraries as uses to which wireless communications facilities should not be located in close proximity.

Chair Kunzweiler said that is covered by the wireless standards.

Commissioner Corcoran supported Commissioner Frymier's point.

Chair Kunzweiler concurred, but again said this is addressed by the wireless standards.

Commissioner Corcoran suggested that an independently obtained RF report might carry greater weight than one performed by a company secured by the wireless provider. Despite this, the results are so low relative to the applicable limits that he believes it to be a reasonable application. He said this site is ideal for targeting the maximum number of consumers and he could support the project.

Chair Kunzweiler concurred.

<p>ACTION: It was M/S (Frymier/Corcoran) to adopt the resolution granting a conditional use permit for the installation and operation of a wireless communications facility located at 1505 Tiburon Boulevard. Motion carried: 3-0.</p>
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**MINUTES:**

**2. PLANNING COMMISSION MINUTES – Regular Meeting of November 11, 2009**

Chair Kunzweiler requested the following amendment to the minutes:

- Page 2, 7<sup>th</sup> paragraph – “Chair Kunzweiler asked if a business license would be required to rent his one's home...”

<p>ACTION: It was M/S (Corcoran/Frymier) to accept the minutes of November 11, 2009, as amended. Motion carried: 3-0.</p>
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**ADJOURNMENT:**

The Planning Commission adjourned the meeting at 8:45 p.m.

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JOHN KUNZWEILER, CHAIRMAN  
TIBURON PLANNING COMMISSION

ATTEST:

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SCOTT ANDERSON, SECRETARY